

Exhibit

2C

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

DAVID NORTON & AKIKO NORTON,
Plaintiffs,

v.

RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION,
Defendant.

CIVIL ACTION NO. 1:25-cv-00029-MSM-LDA

**PLAINTIFFS' SUR-REPLY TO DEFENDANT'S REPLY IN
SUPPORT OF ITS MOTION TO DISMISS**

INTRODUCTION

Plaintiffs, David and Akiko Norton ("Plaintiffs"), submit this Sur-Reply to address new arguments raised by Rhode Island Housing and Mortgage Finance Corporation ("RI Housing") in its Reply in Support of its Motion to Dismiss (ECF No. 19).

Defendant's **entire defense hinges on misrepresenting** Plaintiffs' financial records and repeatedly asserting that Plaintiffs **financed the VA Funding Fee**, despite **clear documentary evidence proving otherwise**. However, Defendant's **focus on the VA Funding Fee is a deliberate distraction** to divert the Court's attention away from the **larger issue: escrow mismanagement, financial misallocation, and potential systemic misconduct**.

This Court should **reject Defendant's attempt to limit the scope of the case** to a single factual dispute while ignoring the broader implications of Defendant's **misuse of escrow funds, conflicting financial records, and evasive explanations** that have led to actual financial harm and emotional distress for Plaintiffs.

ARGUMENT

**I. RI HOUSING SEEKS TO DEFLECT FROM THE REAL ISSUE:
ESCROW MISMANAGEMENT AND MISALLOCATED FUNDS**

Defendant's Reply fixates on whether Plaintiffs **financed the VA Funding Fee**, arguing that Plaintiffs' assertion that it was paid upfront is a "new" claim. However, this is a **misleading and**

strategic deflection from the **real issue**—Defendant's **mismanagement of Plaintiffs' escrow funds, improper fund transfers, and subsequent cover-up**.

Regardless of whether the VA Funding Fee was financed, **Defendant has yet to explain why \$3,902.91 was deposited into Plaintiffs' escrow account at closing, remained there for a year, and was then removed and applied elsewhere under vague and shifting justifications**.

Defendant claims that the funds were simply **“advanced” and “misapplied,”** but has failed to provide:

- Any **documentary evidence** explaining why this specific amount was placed in escrow rather than applied to the VA Funding Fee directly.
- Any **internal communications or approvals** showing how and when the funds were "corrected."
- Any **legal authority or policy justification** for unilaterally moving borrower funds without clear notice or consent.

Instead of addressing these critical issues, **Defendant attempts to constrain the Court's focus to a single factual question about financing the VA Funding Fee**.

This is a **tactical maneuver** designed to:

1. **Minimize Defendant's exposure to liability** by keeping the Court focused on a narrow factual dispute.
2. **Avoid addressing broader escrow mismanagement issues** that could have far-reaching consequences beyond this case.
3. **Delay the case** by framing the dispute as a factual disagreement rather than a clear violation of financial and consumer protection laws.

This Court should reject Defendant's **attempt to sidestep its accountability for financial mismanagement** and instead focus on the **larger pattern of conduct and misuse of escrow funds** at the heart of Plaintiffs' claims.

II. PLAINTIFFS' CLOSING DISCLOSURE (EXHIBIT 2B) IS THE SMOKING GUN THAT DEFENDANT CANNOT EXPLAIN

Defendant claims that **Exhibit 1**—which itemizes Plaintiffs' loan terms—proves that the VA Funding Fee was financed. **This is demonstrably false**.

- **Exhibit 2B (the Closing Disclosure) contradicts Defendant's claim entirely.**
- The loan amount is listed as **\$318,937.00**, which **does not include** the VA Funding Fee.
- The VA Funding Fee is **not part of the loan amount** but instead listed separately under "Services Borrower Did Not Shop For"—confirming it was **paid upfront and not financed**.
- The "Closing Costs Financed" section of Exhibit 2B explicitly states **\$0**, confirming that no part of the closing costs—including the VA Funding Fee—was financed.

By **intentionally misrepresenting** this document, Defendant is attempting to **rewrite financial records** to fit its narrative, rather than confronting the fact that its internal accounting practices have led to **misallocation of borrower funds**.

III. DEFENDANT HAS CONTRADICTED ITSELF MULTIPLE TIMES, FURTHER EVIDENCING MISCONDUCT

Defendant has provided **multiple, conflicting explanations** for how Plaintiffs' escrow funds were handled:

1. In CFPB correspondence, RI Housing stated that the VA Funding Fee was financed and that the funds "belong to RI Housing."
2. In Exhibit D (Loan Notes & Memos), RI Housing claims that the surplus was "discovered" a year later and needed to be "reallocated."
3. Now, in its Reply Brief, RI Housing states that the VA Funding Fee was financed and that Plaintiffs' claim otherwise is "new."

These **contradictions reveal a pattern of deception**, not an innocent mistake. **If Defendant's financial records were accurate, there would be no need for shifting explanations, corrections, and deflections.**

IV. PLAINTIFFS HAVE SUFFICIENTLY ALLEGED RESPA VIOLATIONS AND DAMAGES

Defendant argues that Plaintiffs have not alleged actual damages under RESPA. However, Plaintiffs have demonstrated that:

1. **Defendant mismanaged escrow funds, leading to financial uncertainty and harm.**
2. **Defendant provided conflicting and misleading information in response to Plaintiffs' Qualified Written Request (QWR).**
3. **Plaintiffs suffered financial harm and emotional distress as a result of this uncertainty.**

Under RESPA, damages **do not require direct monetary loss; financial uncertainty, emotional distress, and improper handling of escrow funds** are valid bases for relief. See *Marques v. Fitzgerald*, 99 F.3d 1, 7 (1st Cir. 1996) (recognizing emotional distress as actionable under certain circumstances).

CONCLUSION

Defendant's **Reply is a calculated attempt to steer the Court away from the real issue—its mismanagement of escrow funds and financial misconduct.**

Defendant **deliberately misrepresents Exhibit 2B (Closing Disclosure)** and refuses to explain why **borrower funds were moved inappropriately over a year after closing**. Defendant's inconsistent explanations further suggest **a cover-up rather than a good-faith error**.

For these reasons, **Plaintiffs respectfully request that the Court deny Defendant's Motion to Dismiss in its entirety**.

Respectfully submitted,

David Norton
Akiko Norton
Plaintiffs, Pro Se

Date: March 6, 2025